

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION  
2:06CV10-03-MU

KENNETH EDWARD FRANKS, )  
Plaintiff, )  
v. )  
JAMES DOWNS, RONALD K. PAYNE, )  
ZORO J. GUICE, MARILYN MCDAVIS )  
SORRELLS, ANN MELTON, )  
ANNA JANE CARSON, MIKE HOLLAND) )  
Defendants. )

## ORDER

**THIS MATTER** comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. § 1983, filed May 1, 2006. (Document No. 1. )

Plaintiff's § 1983 Complaint challenges his confinement as illegal. Plaintiff alleges that was "suppossed [sic] to have been free in court to begin with because of some charge's [sic] and or charge that had been illegally entered against [him].” (Complaint at 3.)

A case filed under 42 U.S.C. § 1983 requires a deprivation of a right secured by the Constitution by a person acting under color of state law. Plaintiff's Complaint does not state a cognizable cause of action under 42 U.S.C. § 1983. Instead, based on the nature of Plaintiff's Complaint, this Court concludes that Plaintiff is attempting to file a habeas petition collaterally attacking his state court conviction. State prisoners challenging their confinement ordinarily proceed under 28 U.S.C. § 2254.<sup>1</sup> Therefore, this Court will dismiss this action as the Complaint fails to state

<sup>1</sup> Cases filed pursuant to § 2254 are subject to a one year limitations period and require exhaustion of state remedies prior to filing in federal court.

claim for relief pursuant to § 1983.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Plaintiff's Complaint is Dismissed for failure to state a claim for relief;

**SO ORDERED.**

Signed: May 2, 2006



Graham C. Mullen  
United States District Judge

